

MINUTES OF THE CITY OF BURLINGTON
CITY COUNCIL MEETING
FEBRUARY 2, 2010

The City Council of the City of Burlington held a regularly scheduled meeting in the Council Chamber, Municipal Building, 425 South Lexington Avenue, Burlington, N. C., 27216-1358, on February 2, 2010, at 7:00 p.m.

Mayor Ronnie K. Wall presided

Councilmembers Present: Mayor Wall, Councilmembers Huffman, Butler, Ross and Faucette

Councilmembers absent: None

Harold Owen, City Manager: Present

Robert M. Ward, City Attorney: Present

Jondeen D. Terry, City Clerk: Present

INVOCATION: Councilmember Jim Butler

CALL TO ORDER: Mayor Ronnie K. Wall

APPROVAL OF MINUTES:

Mayor Wall called for approval of the City Council minutes of the meeting of January 19, 2010.

Upon motion by Councilmember Ross, seconded by Councilmember Butler, it was resolved unanimously to approve the minutes of the meeting held on January 19, 2010.

ADD-ON: STAFF REPORT: January 2010 Winter Storm

Upon motion by Councilmember Faucette, seconded by Mayor Pro Tem Huffman, it was resolved unanimously to approve the add-on.

ADOPTION OF AGENDA

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Butler, it was resolved unanimously to adopt the agenda.

CONSENT AGENDA:

ITEM 1:

- A) To award a bid in the amount of \$176,805.00 to Yates Construction, Inc., for the South Church Street waterline replacement project.
- B) To temporarily close the following streets during the Alamance Region Antique Car Club show on Saturday, June 5, 2010, from 7:00 a.m. until 4:00 p.m.:
- ❖ Front Street between Spring and Worth Streets
 - ❖ 300 block of Main Street from Front Street to Maple Avenue
 - ❖ Davis Street from Spring Street to Worth Street
 - ❖ City Parking Lot #1 behind Occasions Restaurant
 - ❖ City Parking Lot #2 adjacent to the Depot
- C) To approve a carnival permit for Powers Great American Midway to operate March 17 through 28, 2010, from 5:00 p.m. until 11:00 p.m. weekdays and from 1:00 p.m. until 11:00 p.m. on Saturday and Sunday. The carnival will be held in the former Western Electric parking lot located at the northeast corner of North Church Street and Graham-Hopedale Road. All requirements have been met. The carnival will conclude more than 30 days before the 2010 Alamance County Agricultural Fair.
- D) To approve the 2009-2010 annual audit contract with Stout, Stuart, McGowen & King, L.L.P., and to authorize the Mayor and the Finance Director to execute the contracts.
- E) Budget Amendment 2010-31 - Establish Project Ordinance for Renovation of Existing Recreation and Parks Facilities:

BA2010-31

Increase Revenues:

015-39398-0000	Appropriate Fund Balance	\$250,000
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Increase Expenditures:

015-70700-9100	Operating Transfer Out	\$250,000
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RENOVATION OF EXISTING RECREATION AND PARKS FACILITIES

PROJECT ORDINANCE

BA2010-31

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLINGTON, NORTH CAROLINA, that pursuant to Section 13.2, Chapter 159, of the General Statutes of North Carolina, the following project ordinance is hereby adopted:

- Sec. 1. The project authorized is a future renovation of existing Recreation and Parks facilities.
- Sec. 2. The officials of the City of Burlington are hereby directed to proceed with this project within the budget outlined in the project ordinance.
- Sec. 3. The following revenues are anticipated to be available to the City to complete the project:
- | | | |
|----------------|-----------------------------|-----------|
| 441-38000-0015 | Operating Trans In-Cap Resv | \$250,000 |
|----------------|-----------------------------|-----------|
- Sec. 4. The following amounts are appropriated for the project:
- | | | |
|----------------|------------------------------|----------------|
| 441-60000-7200 | Buildings | \$ 40,200 |
| 441-60000-7300 | Capital - Other Improvements | 81,166 |
| 441-50000-1500 | Maint/Rep Bldg/Grounds | <u>128,634</u> |
| | | \$250,000 |
- Sec. 5. The Finance Director shall report on the financial status of this project as directed by the City Council and shall inform the Council of any unusual occurrences.
- Sec. 6. Copies of this project ordinance shall be made available to the Budget Officer and the Finance Director for direction in carrying out this project.
- Sec. 7. That this ordinance shall take effect upon passage.

F) Budget Amendment 2010-32 - Traffic Control - Increase Capital - Other Improvements

BA2010-32

Increase Revenues:

010-39398-0000	Appropriated Fund Balance	\$15,000
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Increase Expenditures:

010-54541-7300	Capital - Other Improvements	\$15,000
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Upon motion by Councilmember Butler, seconded by Councilmember Ross, it was resolved unanimously to approve the foregoing consent agenda.

PUBLIC HEARINGS:

ITEM 2: CITIZEN COMMENTS - POTENTIAL AREA HOUSING AND
NEIGHBORHOOD IMPROVEMENT ACTIVITIES - 2010-11 ANNUAL ACTION PLAN
COMMUNITY DEVELOPMENT PROGRAM

Mayor Wall announced that a public hearing had been scheduled to receive public input on potential area housing and community improvement activities for the City to address in the 2010-11 One-Year Action Plan of the Community Development Program.

Planning and Economic Development Director Bob Harkrader stated that this public hearing was required by the Department of Housing and Urban Development for the one-year action plan for the Community Development Block Grant funds that are received each year. Mr. Harkrader stated that notification had not been received from HUD in regards to any formal allocation but staff does expect to receive an increased allocation of approximately seven percent. Mr. Harkrader stated that the City was part of a housing consortium with the City of Greensboro, and through that the City received \$359,000.00 in HOME Partnership investment grant monies which is used for housing rehabilitation in the City of Burlington and the County. Mr. Harkrader introduced Ms. Shawna Tillery, the City's new Community Development Administrator.

Mr. Tony Roper, Executive Director, Alamance County Community Services Agency, asked for consideration of the continued partnership in the development of the Apple Tree Village Subdivision. Mr. Roper stated that through the Home Buyers' Education Program the agency would continue to work with potential home owners and at securing funds for those individuals through the North Carolina Housing Finance Program. He stated that the goal was to construct two units in the coming fiscal year.

Mr. Kep Paylor, North Carolina Home Builders Association, representing the construction training partnership through the NC Housing Finance Agency. Mr. Paylor stated that the program trains low-income economically disadvantaged citizens in construction trades. He asked for the City's continued support.

Upon motion by Councilmember Faucette, seconded by Mayor Pro Tem Huffman, it was resolved unanimously to close the public hearing.

ITEM 3: ADOPT RESOLUTION - REQUEST LOCAL GOVERNMENT COMMISSION APPROVAL FOR INSTALLMENT FINANCING

Mayor Wall announced that the City Council would consider a request to adopt a resolution including certain required findings necessary to move forward with the installment financing as required by the Local Government Commission for the costs of constructing, extending, widening, resurfacing and improving streets in the City.

Finance and Risk Management Director Peggy Reece stated that last year, after the federal stimulus package was passed, Council asked staff to determine if the City had any projects that could be funded through the stimulus funds. It was determined that the paving of streets in the downtown area would meet the qualifications for these funds. There were several steps involved in this process. First, Alamance County passed a resolution declaring the entire county an economic recovery zone. Second, the county passed a resolution allocating \$2.899 million of recovery zone economic development funds to the City. Third, the City staff filed notification with the NC Department of Commerce of the City's intentions of using RZED funds. Ms. Reece stated that the awarding of the contract for paving streets was approved by Council at its December 15, 2009, meeting. The bids came in below expected cost therefore allowing streets outside the downtown area to be paved.

Ms. Reece further stated that the Recovery Zone Economic Development (RZED) funds opened up another market, taxable financing, not normally available to municipalities. The lowest tax exempt rate the City had received as a bid was 4.45 percent. The lowest taxable rate received was 5.89 percent, which after taking into account the RZED subsidy equates to a 3.24 percent rate, giving the City approximately \$417,000 savings in interest over the life of the loan.

Ms. Reece asked Council to approve the following:

1. Resolution accepting Bank of America's proposal.
2. Resolution of certain findings that authorizes and approves the filling of an application with the Local Government Commission and requests the LGC to approve the agreement and proposed financing within.

3. To authorize the City Clerk to attest to five originals of the resolution.

Councilmember Ross asked what was the taxable rate and Ms. Reece replied that the rate was 5.89 percent but the subsidy brought it down to a net rate of 3.24 percent.

Councilmember Butler reiterated that the net rate to the City was 3.24 percent. He asked if the City had previously participated in taxable financing, and Ms. Reece answered that the City had had not been allowed to previously. Councilmember Butler asked if there were other contingencies that made this taxable financing more controversial, and Ms. Reece replied not controversial but that there were more steps and procedures to be followed. Councilmember Butler asked if it was more from an administrative standpoint, and Ms. Reece answered yes.

City Manager Owen pointed out that the controversy in the City of Greensboro was in regard to stimulus funds for private businesses, not public entities.

City Manager Owen reiterated that Alamance County shared stimulus funds for this financing with the City of Burlington.

Councilmember Ross asked if this was a faster process, and Ms. Reece said everyone hurried to get the application completed by the North Carolina Department of Commerce's deadline of December 15, 2009.

Councilmember Faucette asked if the project included wireless internet for Downtown, and Ms. Reece said that approximately \$88,000 was designated for infrastructure to provide wireless internet downtown. Councilmember Faucette referred to Page 6, Item J, of the resolution and asked if this financing would require a tax increase. Ms. Reece said there was sufficient funding to cover the debt. Ms. Reece stated that the City was not allowed to increase taxes with this type of financing.

Councilmember Ross said that typically with debt financing the taxing authority was pledged.

Ms. Reece stated that was the case with General Obligation Bonds, but with installment financing, the amount pledged was the collateral.

Mr. Richard Parker asked of the \$2.899 million, what was the bid for paving downtown streets, and Ms. Reece answered approximately \$1.7 million. She said that after the downtown

streets were paved, the City would continue paving other City streets starting with the ones that were in the worse condition until the money was depleted.

Upon motion by Councilmember Ross, seconded by Councilmember Faucette, it was resolved unanimously to close the public hearing.

Councilmember Ross made the following motions:

1. To adopt a resolution accepting Bank of America's proposal.
2. Adopt a resolution of certain findings that authorizes and approves the filling of an application with the Local Government Commission and requests the LGC to approve the agreement and proposed financing within.
3. And to authorize the City clerk to attest to five originals of the resolution.

10-01

The City Council of the City of Burlington, North Carolina met in a regular meeting in the Council Chambers in the Municipal Building located at 425 South Lexington Street in Burlington, North Carolina, the regular place of meeting, at 7:00 p.m. on February 2, 2010.

Present: Mayor Ronnie K. Wall, presiding, and Council Members David R. Huffman, James B. Butler, Stephen M. Ross and Celo I. Faucette

Absent: Council Members - None

Also present: City Manager Harold Owen, City Attorney Robert Ward, City Clerk Jondeen Terry and Finance Director Peggy Reece

The Mayor announced that this was the hour and day of the public hearing on a proposed installment financing agreement to be entered into by the City pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended (the "Act"), in a principal amount not to exceed \$2,900,000 for the purpose of providing funds, together with any other available funds, to pay the costs of (a) constructing, extending, widening, resurfacing and improving streets in the City and (b) acquiring and installing various wireless local area network equipment in the City (collectively, the "Project"). Such financing would be secured by a deed of trust, security agreement or similar instrument granting a lien on, or security interest in, all or a portion of the project to be financed pursuant to the Agreement.

The Mayor acknowledged due publication of the notice of public hearing in a newspaper with a general circulation in said City as required by Section 160A-20(g) of the Act and directed the City Clerk to attach the affidavit showing publication in said paper on a date at least ten days prior to the date hereof as Exhibit A hereto.

The Mayor then announced that the City Council would immediately hear anyone who might wish to be heard on advisability of the proposed Project or financing as so described.

A list of any persons making comments and a summary of such comments are attached as Exhibit B hereto.

All statements and comments were duly considered by the Council Members.

Thereupon, Councilmember Ross introduced the following resolution the title of which was read and copies of which had been distributed to each Council Member:

RESOLUTION ACCEPTING THE PROPOSAL OF BANK OF AMERICA, N.A. IN CONNECTION WITH AN INSTALLMENT FINANCING FOR THE CONSTRUCTION AND IMPROVEMENT OF STREETS AND THE ACQUISITION AND INSTALLATION OF VARIOUS WIRELESS LOCAL AREA NETWORK EQUIPMENT IN THE CITY OF BURLINGTON, NORTH CAROLINA

WHEREAS, the City of Burlington, North Carolina (the “City”) intends to enter into an installment financing agreement pursuant to Section 160A-20 of the General Statutes of North Carolina for the purpose of paying the costs of (a) constructing, extending, widening, resurfacing and improving streets in the City and (b) acquiring and installing various wireless local area network equipment in the City (collectively, the “Project”);

WHEREAS, the City has solicited proposals from banks to provide the financing for the Project; and

WHEREAS, upon careful review and consideration of the proposals submitted by banks to provide such financing, the City desires to accept the proposal of Bank of America, N.A. (the “Bank”);

NOW, THEREFORE, BE IT RESOLVED by the City Council (the “City Council”) of the City of Burlington, North Carolina (the “City”) as follows:

1. The proposal of the Bank to provide financing through an installment financing agreement in the principal amount not to exceed of \$2,900,000 for the purpose of providing funds, together with any other available funds, to pay the costs of (a) constructing, extending, widening, resurfacing and improving streets in the City and (b) acquiring and installing various wireless local area network equipment in the City (collectively, the “Project”) is hereby accepted, subject to further approval of the particular documentation related thereto by the City Council.
2. The City Manager and the Director of Finance and Risk Management of the City are each hereby authorized and directed to execute and deliver such documentation as may be necessary to accept the proposal of the Bank.
3. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member Ross, seconded by Council Member Huffman, the foregoing resolution was adopted by the following vote:

Ayes: Wall, Huffman, Butler, Ross and Faucette

Noes: None

Thereupon, Councilmember Ross introduced the following resolution the title of which was read and copies of which had been distributed to each Council Member:

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE FINANCING OF THE CONSTRUCTION AND IMPROVEMENT OF STREETS AND THE ACQUISITION AND INSTALLATION OF VARIOUS WIRELESS LOCAL AREA NETWORK EQUIPMENT IN THE CITY OF BURLINGTON, NORTH CAROLINA PURSUANT TO AN INSTALLMENT FINANCING AGREEMENT AND REQUESTING THE LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING ARRANGEMENT

BE IT RESOLVED by the City Council (the “City Council”) of the City of Burlington, North Carolina (the “City”) as follows:

Section 1. The City Council does hereby find and determine as follows:

(a) There exists in the City a need to (a) construct, extend, widen, resurface and improvement streets in the City and (b) acquire and install various wireless local area network equipment in the City (collectively, the “Project”).

(b) After due consideration, the City has determined to enter into an installment financing agreement (the “Agreement”) in the aggregate principal amount not to exceed \$2,900,000 to pay, together with any other available funds, the costs of the Project.

(c) The City will enter into the Agreement with Bank of America, N.A. (the “Bank”), pursuant to which Agreement said Bank will advance to the City amounts sufficient to pay the cost of financing the Project, and the City will repay the advancement in installments, with interest (the “Installment Payments”).

(d) In order to secure its obligations under the Agreement, the City will execute and deliver a deed of trust, security agreement or similar instrument (the “Security Instrument”), granting a lien on or security interest in all or a portion of the project to be financed pursuant to the Agreement.

(e) It is in the best interest of the City to enter into the Agreement and the Security Instrument in that such transaction will result in providing financing for the project in an efficient and cost effective manner.

(f) Entering into the Agreement is preferable to a general obligation bond and revenue bond issue in that (i) the City does not have the constitutional authority to issue non-voted

general obligation bonds pursuant to Article V, Section 4 of the North Carolina Constitution because the City has not retired a sufficient amount of debt in the preceding fiscal year to issue a sufficient amount of general obligation bonds for the Project without an election; (ii) the size of the financing does not allow for the issuance of revenue bonds in as economical a manner as entering into the Agreement; (iii) the cost of the Project exceeds the amount to be prudently provided from currently available appropriations and unappropriated fund balances; (iv) the circumstances existing require that funds be available to commence construction of the Project as soon as practicable and the time required for holding an election for the issuance of voted general obligation bonds pursuant to Article V, Section 4 of the North Carolina Constitution and the Local Government Bond Act will delay the commencement of construction of the Project by several months; and (v) there can be no assurances that the Project will be approved by the voters and the necessity of such Project dictates that the Project be financed by a method that assures that such Project will be constructed in an expedient manner.

(g) It has been determined by the City Council that the cost of financing the Project through an installment financing agreement is reasonable comparable to the costs of issuing general obligation bonds or notes or other available methods of financing and is acceptable to the City Council.

(h) Counsel to the City will render an opinion to the effect that the proposed undertaking as described above is authorized by law and is a purpose for which public funds may be expanded pursuant to the Constitution and laws of the State of North Carolina.

(i) The debt management policies of the City have been carried out in strict compliance with law, and the City is not in default under any obligation for repayment of borrowed money.

(j) Any tax rate increase necessary to pay the Installment Payments will be reasonable.

Section 2. The City Council hereby authorizes and approves the filing of an application with the Local Government Commission for approval of the Agreement and requests the Local Government Commission to approve of the Agreement and the proposed financing in connection therewith.

Section 3. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member Ross, seconded by Council Member Huffman, the foregoing resolution was adopted by the following vote:

Ayes: Wall, Huffman, Butler, Ross and Faucette

Noes: None

* * * * *

I, Jondeen Terry, City Clerk of the City of Burlington, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of said City at a regular meeting held on February 2, 2010, as it relates in any way to the holding of a public hearing and the passage of the foregoing resolutions relating to an installment financing agreement by said City and that said proceedings are recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said City this 2nd day of February 2010.

The foregoing resolution was seconded by Mayor Pro Tem Huffman, and it was passed unanimously.

NEW BUSINESS:

ITEM 4: APPROVAL OF 2010-11 ADVOCACY AGENDA

Mayor Wall announced that the City Council would consider approval of the 2010-11 Advocacy Agenda.

City Manager Harold Owen stated that the proposed Advocacy Agenda was a reflection of what the League of Municipalities had brought forth and asked Council to approve.

Councilmember Butler asked that the last item "electronic notices" be changed to read "in addition to newspaper ads" concurring with Mr. Tom Boney's request. Councilmember Ross agreed with Councilmember Butler.

Upon motion by Councilmember Butler, seconded by Councilmember Ross, it was resolved unanimously to approve the 2010 Advocacy Agenda with the change reflecting that electronic notices be sent in addition to newspaper ads.

2010 Advocacy Agenda

Advancement and Protection of Core Municipal Principles

The League will advance and protect core municipal principles. These include ensuring a stable, reliable municipal revenue stream; maintaining the flexibility needed for sound fiscal management; advocating against unfunded, burdensome mandates; preserving local authority and decision-making; adhering to standards of ethical conduct and open government; providing wide-ranging services without overly burdensome liability; and ensuring citizens are well served through cost-effective, environmentally responsible operations, planning and land management.

Annexation for Fair, Managed Growth

The League continues to support careful change to the long-standing municipal annexation laws in a way that provides for fair and equitable consideration of all citizens' needs and concerns and allows cities and towns to grow in an orderly manner.

Air Quality

The League will seek legislation and administrative action to obtain technical assistance and to authorize the use of tools such as early action compacts to promote regional cooperation and assist nonattainment areas in complying with new ozone regulations.

Water Resources

The League will seek legislation to provide for the gathering of data for all water withdrawals sufficient for basin-wide modeling and future allocation decisions. The League will seek amendments to water allocation legislation to provide for the appropriate duration of permits, protection of existing municipal withdrawals, autonomy in determining rate structure, and simplifying and integrating the state water and sewer funding process. The League will seek legislation or administrative changes to promote water reuse, including a redefinition of reclaimed treated water as a resource of non-potable purposes. The League will seek further study of water storage needs and methods, including surface and aquifer conservation and storage.

Municipal Incorporation Reform

The League will seek legislation imposing more stringent requirements on new municipal incorporations and requiring an incorporation proposal to receive a positive recommendation from the Joint Legislative Commission on Municipal Incorporations in order to be considered by the General Assembly.

Infrastructure Financing

The League will work to ensure that both short and long-term solutions are developed and implemented to address critical infrastructure needs for roads, bridges, transportation systems, high speed broadband communications, water, sewer, stormwater systems, and affordable housing, without unwise preemption of local authority. These are the foundation for the high quality of life our citizens deserve and the future we wish to build in North Carolina. The League also will seek legislation to provide additional funds for key municipal infrastructure, including long term permanent sources of dedicated revenue, additional local option revenue sources, and state bond packages for infrastructure needs.

Energy/Sustainability

The League will seek legislation to enhance the ability of municipalities to implement sustainable, energy-efficient practices and programs, and to remove obstacles to doing so, through incentives, funding and research. The League will further seek to clarify local government land use authority related to renewable energy facilities.

Alcoholic Beverage Control

The League will seek further legislation to strengthen municipalities' ability to regulate inappropriate location of licensed alcohol establishments. Significant secondary effects have arisen from the inappropriate location of alcohol establishments.

Sanitary Sewer Overflows

The League will seek legislation or administrative changes to address inequities and inconsistencies in the issuance of notices of violation and civil penalties for sanitary sewer overflows.

Stormwater Fees

The League will seek legislation to codify the obligation of governmental agencies with regard to payment of local government stormwater utility fees for agency facilities.

Electronic Notices

The League will seek legislation to authorize municipalities to use the option of electronic means to provide notice for certain public hearings. Providing internet notice for select public hearings is today a more effective and efficient method for reaching interested citizens in many communities in addition to newspaper ads.

Open Space

The City of Burlington to advocate for the allocation of funds needed to provide adequate open space to sustain a high quality of life for future generations.

STAFF REPORT:

Public Works Director Nolan Kirkman gave an update on the January 29, 2010, winter storm.

Mr. Kirkman stated that on Thursday before the storm the spraying of brine on streets began covering 70 lane miles of thoroughfares and 108 lane miles of secondary streets including the 14 lane miles of downtown. He stated that after the snow began accumulating plowing began on thoroughfares along with secondary streets and residential with the exception of cul-de-sacs and small street segments which are not covered in the plan. Mr. Kirkman stated that during the evening with the low temperatures and amount of traffic streets were packed with ice and became more difficult to scrape. The thoroughfares and secondary streets were salted and scraped a second time. On Monday a third salting of thoroughfares of secondary streets was performed along with plowing of secondary streets. On Tuesday, the Street Department continued working on secondary roads and sanitation routes in order to begin trash pick-up.

Mr. Kirkman stated that the biggest challenge was the dynamics of the snow bonding to the pavement. He stated that the cost of both storms would be approximately \$50,000.

Mayor Wall and Councilmember Faucette commended the street division for its efforts and hard work in clearing the streets.

PUBLIC COMMENT PERIOD

There were no public comments.

CITY COUNCIL COMMENTS

Mayor Wall stated that February 6, 2010, was "Give A Kid A Smile" at the Alamance County Dental Clinic on McKinney Street.

Mayor Wall also stated that the Council's Retreat was an outstanding event and that staff did a great job of making presentations to Council.

ADJOURN:

Upon motion by Mayor Pro Tem Huffman, seconded by Councilmember Butler, it was resolved unanimously to adjourn.

Jondeen D. Terry
City Clerk